IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST,
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 3151 of 2004

Between:

K. Durga, D/o. Surya Narayana,

D.No. 41-12-3, Krishnalanka, Vijaywada.

..... PETITIONER

AND

1 S. OPavan Kumar, S/o. Surya Venkata Seshadri Shastri,
Plot No. 7, Manikonda Village, Rajendra Nagar Mandal, R.R. District.

2 Lok Adalat, L.B. Nagar, Ranga Reddy District, Rep. by Serving Officer.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction in the nature of Writ of Certiorari and call for the records from the 2nd respondent pertaining to Award in O.P. No. 25/2003 dated. 28.7.2003 and quash the same by declaring the said award as null and void, unlawful and illegal .

Counsel for the Petitioner:MR.G.VASANTHA RAYUDU

Counsel for the Respondent No.1:MR.KURITI BHASKARA RAO
Counsel for the respondent No.2: None appeared.

The Court made the following :

ORAL ORDER:

(Per Hon'ble The Chief Justice)

1. The petitioner before us is the wife of respondent No.1 and has questioned the legality and validity of the Award passed on 28th July, 2003 in O.P.No.25 of 2003 by the Lok Adalat, Ranga Reddy District.

2. The allegations made in the petition are that petitioner's husband - respondent No.1 herein is a Clerk of an Advocate and procured the decree by playing fraud. The petitioner claims that they were married on 15th March, 1998 at Durga Malleshwara Kanaka Durga Temple, Vijayawada, in the presence of their parents, elders and relatives. After marriage, they shifted to Hyderabad, started residing in Hyderabad and were blessed with two children, namely, a girl aged about 5 years and a boy aged about 3 years. While they were leading happy married life, according to her, respondent No.1 told that his friend had given a challenge to him to get divorce from the petitioner without asking any questions and to prove that she was faithful wife who would follow the words of her husband. Thus her husband said that she will have to live separately and in case she will not do so, he threatened to kick her out. Her allegations are that she later came to know that O.P.25 of 2003 was filed by 1st respondent before the Principal Senior Civil Judge,Ranga Reddy District under Section 13-B of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') with distorted facts that they were living separately. As a matter of fact, they were living together and continued to live together till Award was obtained by 1st respondent on 28-07-2003. Only in the month of August, 2003, she went to her parents' house and had to submit a representation to Legal Services Authorities on 5.11.2003 and also served notice on respondent No.1 when she was told that the Award of Lok Adalat had become final and conclusive. Thus she has challenged the Award of Lok Adalat as illegal, void and without jurisdiction since on the date of presentation of the petition, neither the Principal Senior Civil Judge could have entertained the petition on the grounds alleged in the petition nor Lok Adalat could have passed the order

on the basis of the averments made in the petition.

3. Respondent No.1 was directed to be served and thereafter respondent No.1 has filed affidavit in reply and opposed the petition denying the allegations that fraud was played in obtaining the Award from the Lok Adalat. He states that they have been living together and in the month of August, 2001 they have agreed to live separately and actually started residing separately since November, 2001, and that voluntarily they had agreed to have annulled the marriage by decree of divorce by mutual consent. He says that there is no ground to set-aside the Award of Lok Adalat which was passed to the knowledge of the petitioner voluntarily.

4. On the last day when the petition was taken up, a specific question was posed to the learned counsel for respondent No.1 to satisfy as to how the petition filed under Section 13-B of the Act has been entertained and decided on the bare allegations made in the petition.

5. Today we have heard counsel for the parties and gone through the record.

6. It is not disputed on behalf of 1st respondent that the marriage did take place between the parties on 15th March, 1998 and as a result of the marriage, two children were born and that after the marriage, the parties have been living happily at Rajender Nagar Mandal, Ranga Reddy District. According to the counsel for respondent No.1 a petition under Section 13-B was jointly filed by him and the petitioner on 22-1-2003 before the Principal Senior Civil Judge, Ranga Reddy District through a common lawyer, who was engaged by both of them, and it was later on transferred to the Lok Adalat which took up the petition on 28-07-2003 and passed the Award.

7. The petition was filed under Section 13-B of the Act alleging that differences arose between the parties, who fought with each other and thereby unpleasantness

and quarrelling nature prevailed in the family and consequently they started living separately since November, 2002 as they could not live together due to misunderstandings. Petitioner further alleged that parents of respondent No.1 interfered into the affairs of the parties and the efforts of the elders became futile and ultimately both of them decided to live separately by taking divorce by mutual consent. In para II (b) of the petition in O.P.No.25 of 2003, the date from which the parties actually started living separately is mentioned as November, 2002. However, in para III of cause of action it was stated that cause of action arose to file petition under Section 13-B on 15th March, 1998 when parties got married and on 3rd August, 2001, when they decided to reside separately and on all subsequent dates when petitioners decided to take mutual divorce. In the last line of para 2 (a) it is mentioned that after children were born, petitioners lived happily till August, 2001. Para 5 is as regards limitation wherein it is stated the petition is filed after expiry of one year from the date of solemnization of marriage. On these averments made in the petition, prayer was made to pass a decree for divorce by mutual consent under Section 13-B of the Act.

8. For obtaining divorce by mutual consent, grounds are enumerated in Section 13-B that subject to the provisions of the Act, petition for dissolution of marriage by decree of divorce must be presented by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. The provision would show that petition seeking decree of divorce by mutual consent can be filed jointly by the parties on the ground that they have been living separately for a period of one year or more. Nowhere in the petition there is any single averment made that they had been living separately for the last more than one year prior to the date of presentation of petition. Reading of sub para (a) & (b) of Para II and III of the petition together would show that decision to reside separately was taken in August, 2001, but actually the parties started residing separately since November, 2002. Section 14 of the Act is a provision which applies to any petition for dissolution of marriage by decree of divorce and says that notwithstanding anything contained in the Act, it shall not be competent for any court to entertain any

petition for dissolution of marriage by decree of divorce unless at the date of the presentation of petition, one year has elapsed since the date of the marriage. Proviso to sub-section (1) of Section 14 empowers the Court to permit a petition to be filed before one year on an application made in accordance with the rules as may be framed by the High Court. But that is not a position in the instant case. Respondent No.1 alleged that it was being presented after expiry of the period of one year. Therefore, Section 14 of the Act was complied with. But there was total lack of averment or a ground on which a petition could be filed on 22nd January, 2003 under Section 13-B of the Act, which could have been filed only after November, 2003 and not before that, on the basis of which allegations are made in the writ petition. Thus the Principal Senior Civil Judge blindly entertained the petition without satisfying as to whether it was maintainable under Section 13-B of the Act or not. The docket order does not show that the Principal Senior Civil Judge has applied his mind to the averments made in the petition and a stereo type order was passed after the petition was presented saying, 'call on 28-7-2003.'

9. On 28-7-2003 when the matter was taken up by Lok Adalat, it recorded its order as follows:

> *" Petitioners 1 and 2 are present along with their respective counsels are present. Their marriage held on 15-3-1998 . At the instance of Lok Adalat they have compromised the matter. They have submitted a memorandum of compromise. The terms of compromise were read over and explained to them, to which both of them agreed to the terms of compromise is to be true and correct. Hence compromise is recorded. The marriage in between the petitioners 1 and 2 is hereby dissolved by mutual consent. Parties bear their own costs. Award passed accordingly."*

10. A reading of the said order gives an impression that both petitioners were present with their respective counsel, which would suggest that two separate counsel were present. In fact, as admitted by the learned counsel for respondent No.1, parties were represented by only one counsel and they have not engaged separate counsel.

11. Before the Principal Senior Civil Judge or before the Lok Adalat there was no other material placed except filing a bare petition purported to have been filed jointly and one Lawyer represented both the parties. No separate statements were recorded either by the Principal Senior Civil Judge or by Lok Adalat and we cannot lose sight of the fact that husband is none else than Clerk of a Lawyer. On bare note, treating it or the averments contained in the petition to be true as on 22-01-2003 or even as on the day when Lok Adalat took up the petition, petition under Section 13-B of the Act could not have been entertained and decided and on the basis of the averments of parties, the marriage between the parties could not have been dissolved by decree of mutual consent. Thus entertaining the petition and deciding the same are wholly without jurisdiction and there is no option left with us except to set-aside the Award of the Lok Adalat and proceed to hold that the petition jointly filed under Section 13-B of the Act, which was registered as O.P.No. 25 of 2003 on the file of Principal Senior Civil Judge, Ranga Reddy District, was neither valid nor maintainable and the same is liable to be dismissed by setting aside the impugned Award. We hold that marriage between the parties subsists as of today.

12. In the result, Writ Petition is allowed, setting-aside the impugned Award dated 28-07-2003 in O.P.No.25 of 2003. No costs.

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DEVINDER GUPTA. C.J.,

_____

C.V. RAMULU. J.,

12-08-2004.

STP

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Twelfth day of August,Two Thousand and Four.

Sd/-

ASSISTANT REGISTRAR

1. The Serving Officer,Lok Adalat, L.B. Nagar, Ranga Reddy District.

2.2CD copies

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.P.NO. 3151 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 12.08.2004.